

UNITED STATES DISTRICT COURT
Middle District of Florida
Office of the Clerk

Sheryl L. Loesch

Division Manager
Tampa (813) 301-5400

IMPORTANT NOTICE TO SURETIES

This information memorandum is provided to persons posting bail monies and/or other collateral pursuant to Fed.R.Crim.P. 46 and Chapter 207 - Release and Detention Pending Judicial Proceedings of Title 18, United States Code.

It is highly recommended that such individuals read the relevant federal rules and statutes and be aware of all restrictions imposed upon the Defendant through the Court's release order.

In making such deposits, it is also imperative that individuals fully understand the limitations imposed upon the Clerk's Office with respect to any possible return or exoneration of such deposits.

CASH BOND

Money for a surety bond may be posted in the form of a cashier's check, money order or cash only; personal checks are not accepted. When the person posting the money (hereafter referred to as "surety"), is ready to pay the bond, they will proceed to the Intake Section, Second Floor, where a receipt will be written. The surety must complete either an Affidavit of Exclusive Ownership of Cash Bail form or an Affidavit of Other Ownership of Cash Bail. It is important that this form be completed in its entirety before the Magistrate Judge can sign the bond to release the defendant from the custody of the U.S. Marshal.

Pursuant to the Tax Reform Act of 1984 and the Anti-Drug Abuse Act of 1988, the Clerk's Office is required to report the receipt of more than \$10,000 in cash to the Internal Revenue Service, as bail for criminal offenses. The term cash is defined as coin and currency of the United States or of any other country, or combinations of coin and currency, cashier's checks, bank drafts, traveler's checks, or money orders, each having a face amount of \$10,000 or less, but totaling more than \$10,000. An IRS 8300 Form must be completed by all individuals submitting cash in excess of \$10,000, at the time the money is received by the Clerk's Office.

DEPOSIT INFORMATION

All monies deposited into the registry fund of the Court in excess of \$5,000 will be deposited into interest bearing accounts at a local bank. When any such deposit exceeds the amount secured by FDIC insurance limits, the Clerk will require the bank to secure additional collateral in order to secure the deposit. This may result in a slight delay in depositing the monies into an interest bearing account. All monies deposited into the registry fund in an amount of \$5,000 or less will be deposited directly into the U.S. Treasury and absent further order of the Court, will be maintained there during the pendency of the litigation. Monies maintained at the U.S. Treasury do not draw interest.

PROPERTY BONDS

In order for a judicial officer to approve real property as security for bail bond in a criminal proceeding, the following documents and information must first be furnished at no cost to the Court:

1. Affidavit of Property Owner. The attorney for the defendant shall furnish the Clerk of this Court a current affidavit from the property owner (a) giving the legal description of the property; (b) stating that the property is free and clear of any mortgages or liens, or if there is a mortgage, the amount of the mortgage and name and address of mortgage holder **[some judges may require that the property be free and clear of any mortgages]**; (c) stating that the property is owned by only the affiant(s); (d) stating whether the property is homestead property as defined by the State of Florida; (e) acknowledging that the affiant owners are aware that they are mortgaging their real property to the Clerk of Court, United States District Court, Middle District of Florida, as security for a bail bond in a criminal case, which real property may be subject to foreclosure or other forfeiture if the defendant fails to comply with the conditions of his/her release; (f) stating the amount of said mortgage they will execute as security in the amount which is set by the Court and that they believe that they have an equitable interest in said real property equal to the amount of said mortgage; (g) giving the marital status of the owner, if the property is homesteaded, both spouses must sign the affidavit and accompanying bond paperwork even though only one spouse may be the owner of the property; and (h) stating that the affiant(s) acknowledge that any fraudulent or false statements may subject them to criminal prosecution.
2. Certificate of Title Insurance. The attorney for the defendant shall also cause to be furnished a certificate of title insurance from a title insurance company and issued by an underwriter licensed by the State of Florida. The certificate shall be a mortgagee-type policy issued in favor of the Clerk of Court, United States District Court, Middle District of Florida, in an amount to be set by the Court.
3. Loss Payable Clause from Insurance Company: The insurance company with coverage on the property must issue a notice of coverage with a loss payable clause to the Clerk of Court, United States District Court, Middle District of Florida, to protect the Court's interest in the property.
4. Appraisal. The attorney for the defendant shall furnish a current appraisal of the real property by a licensed property appraiser. The appraisal shall have been made within the last two years, or within such lesser period of time as the title insurer may require.
5. Original Mortgage. The attorney for the defendant shall furnish a mortgage on the real property in question, both executed and acknowledged by the record title holder. If the property is homestead, both husband and wife must execute the mortgage regardless of the record title holder. The amount of the mortgage shall be set by the court and shall be made in favor of the Clerk of Court, United States District Court, Middle District of Florida. The mortgage shall have been validly recorded in the county where the real property is situated, and all filing and documentary stamps shall have been paid thereon. The terms of the mortgage shall be that the amount thereof shall become immediately due and payable upon demand of the Clerk of Court pursuant to an order of forfeiture from the Court.
6. Satisfaction of Mortgage. The attorney for defendant shall furnish a satisfaction of mortgage to be executed by the Clerk of Court when the Court releases the real property pledged as security for the bail bond. It must contain a legal description of the property in the body of the satisfaction. The legal description may be attached on a separate sheet if too lengthy to fit in the section provided in the standard satisfaction form, but must be referenced as an attachment in that section. It is not necessary that standard, pre-printed satisfaction forms be used; however, the language must be substantially the same. When the bond is released by the Court and the property exonerated, the attorney for the defendant shall file the satisfaction and pay the recording fee.

RETURN OF MONIES AND/OR OTHER COLLATERAL

It is imperative that individuals fully understand the limitations imposed upon the Clerk's Office with respect to any possible return or exonerations of such deposits.

- (a) **Court Order Required:** Monies and/or other collateral can only be returned by the Clerk's Office after receipt, docketing and processing of a motion and appropriate Court order.¹ (Sample order of distribution attached)
- (b) **Return to Individual Making Deposit:** Unless otherwise directed by Court order, or unless a proper assignment of the deposit has been filed with the Clerk's Office, return of monies and/or other collateral can only be made to the individual responsible for making the deposit with the Clerk's Office.
- (c) **Responsibility for Preparing Court Order:** It is the responsibility of counsel to ensure proper disposition of all matters relating to a criminal case, including the final disposition of cash bail or collateral deposit. All motions and proposed orders for disbursement shall provide at a minimum the following information:
 - ▶ Last name, first name and middle name and/or initial of each payee.
 - ▶ Social Security Number of each individual payee, or tax identification number of each non-individual payee.
 - ▶ Complete mailing address for each payee.
 - ▶ Amount of principal to be disbursed to each payee, and if appropriate, the percentage share of any accumulated interest to be disbursed to each payee as well.
 - ▶ Name, relationship to payee(s), and mailing address of the person to whom the check is to be mailed, if other than the actual payee(s).

DISBURSEMENT OF MONIES

After the Order has been signed by the Court and docketed by the Docket Clerk, it is then forwarded to the Financial Section for processing. Upon receipt by the Financial Section, action is promptly taken to close out the pending account and to issue a check to the appropriate individual within 3-5 working days. In the case where the monies are held in an interest bearing account, the Clerk's Office will provide the bank with the payee information and the bank will prepare and issue an IRS Form 1099 (Interest Income Statement).

RELEASE OF PROPERTY

After the Order has been signed by the Court and docketed by the Docket Clerk, it is then forwarded to the Financial Section for processing. If a Satisfaction of Mortgage was not submitted at the time of the filing of the mortgage, counsel submitting the motion for release will be contacted and asked to submit one. The Clerk's Office does not prepare the satisfaction form. (See section on Property Bonds for required information to be included on satisfaction.) The Satisfaction of Mortgage will be issued and mailed to the person who filed the motion for release.

The offering party is again reminded that the ultimate responsibility for effecting the return of deposits and/or collateral is vested with the individual making the deposit and counsel.

¹ Fed.R.Crim.P.46(f) provides in part that "(W)hen the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the **Court** (emphasis added) shall exonerate the obligators and release the bail."

If you have any questions about this memorandum, or the general procedures relating to depositing and possible return of case bail and/or other collateral, please discuss the matter with counsel or you may contact the Financial Section at (813) 301-54548

SHERYL L. LOESCH, CLERK

Attachments

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. _____

ORDER FOR EXONERATION OF CASH BAIL

This cause came on for consideration upon the defendant's Motion to Return Case Bond. The records in the instant action indicate that the conditions of the original appearance bond have been satisfied in accordance with Fed.R.Crim.P. 46(f) and that the bond should be exonerated. Therefore, it is

ORDERED:

The Clerk of Court shall disburse the principal and accumulated interest, if any, to the Recipient(s) listed below:

Name of Recipient: _____

Address of Recipient: _____

Social Security No. or Tax ID. No. _____

The Clerk shall mail the check to the payee at the address listed above.

DONE AND ORDERED this _____ day of _____, 20_____

at Tampa, Florida.

UNITED STATES DISTRICT JUDGE

c: Counsel of Record
Financial Section, Jacksonville & Tampa

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. _____

ORDER EXONERATING PROPERTY BOND

This cause come on for consideration upon the Defendant's Motion to Exonerate Case Bond. The records in the instant action indicate that the conditions of the original appearance bond have been satisfied in accordance with Fed.R.Crim.P. 46(f) and that the bond should be exonerated. Therefore, it is

ORDERED:

The Clerk of Court shall return all property and/or papers relating to the collateral bail including mortgage deeds, notes, tax receipts and other documents filed with the Court to secure the release of the Defendant, to the Recipient listed below:

Name of Recipient: _____

Address of Recipient: _____

The parties are responsible for extinguishing any liens which may have been registered against the collateral bail documents and/or property.

DONE AND ORDERED this _____ day of _____, 20_____

at Tampa, Florida.

UNITED STATES DISTRICT JUDGE

c: Counsel of Record
Financial Section, Jacksonville & Tampa